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Fred N. Knopf
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December 21, 2007

BY FACSIMILE

Hon. Sidney H. Stein, U.S.D.J.
United States Courthouse
500 Pearl Street, Room 1010
New York, NY 10007

Re: Barnes v. Life Ins. Co. of North America, 07 Civ. 6103 (SHS)
Our File No. : 09856.00073

Dear Judge Stein:

We represent the defendant Life Insurance Company of North America ("LINA") in the referenced matter, and write pursuant to Local Rule 37.2 to request an informal conference to resolve a discovery dispute regarding deposition notices served on LINA by plaintiff's counsel. The parties have informally discussed this dispute and have not been able to resolve it.

During oral argument on November 8, 2007 on LINA's motion to transfer, the Court ordered discovery only on the limited question of whether venue is proper in the Southern District of New York, and specifically whether LINA has systematic and continuous conduct in the District.

Plaintiff has served two deposition notices for depositions to take place at the Garden City office of plaintiff's counsel. The notices are attached to this letter. The first is a notice to depose LINA pursuant to Federal Rule of Civil Procedure 30(b)(6) on January 3, 2008, and proposes to depose LINA on topics outside of the scope of the Court's discovery order. The proposed areas of inquiry including, but not limited to, the administration of plaintiff's claim and subsequent termination of that claim, agreements involving the administration or processing of plaintiff's claim, and knowledge of LINA's compliance with 29 C.F.R. § 2560.503-1 with respect to plaintiff's claim are not proper subjects of inquiry. In addition, topics three and five are vague and seem overbroad, and not designed to get information relevant to the ordered discovery topics. Plaintiff is seeking to use the Court's order of a limited topic of discovery as an opportunity to depose LINA on all topics relating to the administration of Ms. Barnes' ERISA claim for long term disability benefits, and that is not proper pursuant to the Court's order.

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Therefore, LINA seeks a protective order specifically limiting the 30(b)(6) deposition to topics tailored to the venue issue, and not to the specifics of the administration of Ms. Barnes' claim. Those substantive topics are not relevant to whether this matter is properly venued in the Southern District of New York, which is the only issue currently before the Court.

The second deposition notice is to take the deposition of Gary Person on January 4, 2008. Mr. Person is an employee of LINA, but has no personal knowledge of this matter; he was not involved in the review of Ms. Barnes' claim and would not have any information relevant to the permitted scope of discovery. In addition, because Mr. Person is not an officer or director of LINA, and will not be LINA's 30(b)(6) designated witness, he is not subject to ordinary notice under the Federal Rules of Civil Procedure. He works in Dallas, Texas, is not in New York, and will not travel to New York to be deposed. Because Mr. Person has not been properly noticed, he will not be made available to be deposed by LINA.

Thank you for your attention to this matter.

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

/s/

Fred N. Knopf

cc: Justin Frankel, Esq.

NOV-27-2007(TUE) 15:52

Frankel & Newfield, PC

(FAX) 516 222 0513

P. 024/027

516 222 0513

Justin C. Frankel (JF-5983)
 FRANKEL & NEWFIELD, P.C.
 585 Stewart Avenue - Suite 301
 Garden City, New York 11530
 (516) 222-1600

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

 JANE BARNES,

Plaintiff,

- against -

LIFE INSURANCE COMPANY
 OF NORTH AMERICA

 Defendant.

07cv6103 (SHS)

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to 30(b)(6) of the Federal Rules of Civil Procedure, on January 3, 2008, at 10:00 a.m., at the office of FRANKEL & NEWFIELD, P.C., Plaintiff JANE BARNES will take the deposition upon oral examination of Defendant LIFE INSURANCE COMPANY OF NORTH AMERICA, who shall designate one or more representatives to testify in regard to the following subject areas, which are known or reasonably available to the Defendant. For each subject area, the relevant time period is January 2003 to the present.

RECEIVED TIME NOV. 27. 3:10PM

1. Knowledge of Defendant's procedural administration of Plaintiff's claim for benefits, and subsequent termination of disability income benefits by Defendant, including the receipt and evaluation of records, whether medical, pharmaceutical, financial, vocational, factual, or legal;
2. Knowledge of Defendant's agreements, including the terms, meaning and/or import, whether oral or written, by and between Defendant and any third party involved in any manner with the administration of Plaintiff's claim for benefits, including but not limited to compensation to any third party for its role in administering or processing the claim in this case.
3. Knowledge of statistics or data regarding the number of group long term disability claims handled by the Defendant and/or any affiliated CIGNA Administrator for the period from 2003 to present.
4. Knowledge of agreements and communications relating to agreements between Defendant and/or any CIGNA entity that were involved in any manner with the administration or processing of Plaintiff's claim.
5. Knowledge of Defendant's procedures and guidelines in connection with the processing, assessing, approving and denying of group disability claims for the time period 2003 to the present.
6. Knowledge of Defendant's compliance with 29 C.F.R. § 2560.503-1 with respect to Plaintiff's claim.

NOV-27-2007(TUE) 15:52

Frankel & Newfield, PC

(FAX) 516 222 0513

P. 026/027

516 222 0513

Dated: Garden City, New York
November 27, 2007

By: 

Justin C. Frankel
Frankel & Newfield, P.C.
585 Stewart Avenue, Suite L-50
Garden City, New York 11530

Attorneys for Plaintiff

RECEIVED TIME NOV. 27. 3:10PM

NOV-27-2007(TUE) 15:52

Frankel & Newfield, PC

(FAX) 516 222 0513

P. 027/027

516 222 0513

CERTIFICATE OF SERVICE

I, Justin C. Frankel hereby certify that on November 27, 2007, Plaintiff's Notice of Deposition pursuant to FRCP 30(b)(6) was sent via FACSIMILE & First Class Mail to the counsel listed below, by United States mail, postage prepaid:

VIA FACSIMILE (914)323-7001

AND FIRST CLASS MAIL

Emily Hayes, Esq.

Wilson Elser Moskowitz Edelman & Dicker, LLP

3 Gannett Drive

White Plains, NY 10604


Justin C. Frankel (JF-5983)

RECEIVED TIME NOV. 27. 3:10PM

P. 021/027

Justin C. Frankel (JF-5983)
FRANKEL & NEWFIELD, P.C.
585 Stewart Avenue - Suite 301
Garden City, New York 11530
(516) 222-1600

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE BARNES,

Plaintiff,

- against -

07cv6103 (SHS)

LIFE INSURANCE COMPANY
OF NORTH AMERICA

Defendant.

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, on January 4, 2008, at 10:00 a.m., at the office of FRANKEL & NEWFIELD, P.C., Plaintiff JANE BARNES will take the deposition upon oral examination of GARY PERSON at the offices of Plaintiffs' attorneys, FRANKEL & NEWFIELD, P.C., 585 Stewart Avenue, Suite 301, Garden City, New York 11530, beginning at 10:00a.m. To the extent permitted by applicable rules, the deposition may continue on subsequent dates to be scheduled later.

This Notice of Deposition requires the appearance of the above-named deponent for the entirety of the Deposition. The deposition will be recorded by stenographic means.

NOV-27-2007(TUE) 15:52

Frankel & Newfield, PC

(FAX) 516 222 0513

P. 022/027

516 222 0513

Dated: Garden City, New York
November 27, 2007

By: 

Justin C. Frankel
Frankel & Newfield, P.C.
585 Stewart Avenue, Suite L-50
Garden City, New York 11530

Attorneys for Plaintiff

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Franke1 & Newfield,PC

(FAX)516 222 0513

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516 222 0513

CERTIFICATE OF SERVICE

I, Justin C. Frankel hereby certify that on November 27, 2007, Plaintiff's Notice of Deposition was sent via FACSIMILE & First Class Mail to the counsel listed below, by United States mail, postage prepaid:

VIA FACSIMILE (914)323-7001

AND FIRST CLASS MAIL

Emily Hayes, Esq.

Wilson Elser Moskowitz Edelman & Dicker, LLP

3 Gannett Drive

White Plains, NY 10604


Justin C. Frankel (JF-S983)

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